IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ranjeet Gayan @ Manik Vs. State of Rajasthan
(D.B. Criminal Appeal No.688/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 1-4-2003 in Sessions Case No.24/2002 passed by Shri Narayan Sahay Sharma, RHJS, Special Judge (Sati Nivaran) Rajasthan Jaipur and Additional Sessions Judge Jaipur.

Date of Judgment: July 17, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. Chandra Mohan Sanan, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Ranjeet Gayan @ Manik, appellant herein, was put to trial before the learned Special Court (Sati Nivaran) Rajasthan Jaipur and Additional Sessions Judge Jaipur, who vide judgment dated April 1, 2003 convicted and sentenced him under section 302 IPC to suffer imprisonment for life and fine of Rs.500/-, in default to further suffer three months simple imprisonment.

2. It is the prosecution case that informant Ramesh Chand Sharma handed over a written report to the police at SMS Hospital Jaipur wherein he stated that he belonged to village Hingonia, District Jaipur and he had four brothers viz. Sita Ram, Ram Prasad, Ram Swaroop and Ram Murti. They were having a Restaurant which was being run by Ram Swaroop and Ram

Murti. In November,2001 Ram Murti took a contract for running a Canteen in Shobha Nagar near National Medical College Achrol. Appellant, who was employee of the Restaurant, accompanied Ram Murti to help him to run the canteen. Because of loss in the Canteen, it stood disfunctional and Ram Murti along with the appellant came back to Jaipur and appellant started working in the restaurant as usual. Since past wages for eight months were not paid by Ram Murti, the appellant made complaint to the informant. Despite assurance given by the informant, the appellant got annoyed and insisted for immediate payment. In the afternoon of July 10, 2002 Ram Murti had gone to second floor of the restaurant to take a nap. Around 4 PM Babua, servant of informant, rushed nervously to the counter and intimated informant that Ram Murti was lying in an unconscious condition. Ram Murti was removed to the hospital where he was declared dead. On that report Police Station Jalupura Jaipur registered a case under section 302 IPC and investigation commenced. In the course of investigation, inquest proceedings were drawn, site was inspected, statements of witnesses under section 161 CrPC were recorded, the appellant was arrested and after completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Special Court (Sati Nivaran) Rajasthan Jaipur and Additional Sessions Judge Jaipur. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 16 witnesses. In the explanation under section 313 Cr.P.C., the appellant claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned counsel for the appellant and learned

Public Prosecutor and with their assistance weighed the material on record.

4. Death of Ram Murti was concededly homicidal in nature. As per postmortem report (Ex.P-10) following ante mortem injuries were found on the dead body :-

1. Abrasion ¼ x 1/6 cm reddish colour on left middle finger laterally at 2nd phalanx
2. Abrasion ½ x ¼ cm left dorsal elbow reddish colour
3. Two parallel bruise each of size 13cm x ½ cm meeting at both ends with a gap of 1cm in between on Rt. postero lateral of back below thoracic cage obliquely placed reddish colour.
4. Lacerated wound 6cmx 1½ x scalp bone deep transversely placed obliquely on Rt. temporal region. Wound is 8cm above Rt. mastoid process with crushed hair bulbs scalp hairs underlying tissue found crushed with depressed fracture of Rt. temporal bone with staining of blood clots at surrounding scalp hair and tissues.
5. Bruise 4 x 1cm Rt.ear helix reddish colour
6. Bruise 7 x 3 cm Rt. mastoid and upper part of neck post amicular region reddish colour.
7. Abraded lacerated wound of size 12cm x 2½ cm Rt. zygoma to nasion lateral part of 4cm x 2cm of Rt. eye zygoma region abraded reddish colour with lacerated wound 8cm x 1cm x bone deep to brain deep with depressed fracture of Rt. frontal bone and orbital plate orbital ridge going transversely oblique on Rt. side face with fresh clotted blood. On Ex. depressed fracture nasal bones multiple in number with fracture of Rt. maxilla Rt. zygomatic bone Rt. malar bone
8. Lacerated wound 4cm x ¼ cm Rt. alace of nose to left upper lip reddish colour with reddish clotted blood.

Dr. Suman Dutt (PW.7) who was member of the Medical Board constituted to perform autopsy on the dead body opined that the cause of death was coma as a result of head injuries to skull and brain.

5. The case of prosecution is founded on circumstantial evidence,

the evidence afforded not by the direct testimony of an eye witness to fact to be proved, but by the bearing upon that fact or other and subsidiary facts which are relied upon as inconsistent with any result other than truth of the principal facts. Circumstantial evidence is not an evidence direct to the point in issue, but evidence of various facts other than the fact in issue which are so associated with the fact in issue that taken together they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact. It is well settled that the circumstantial evidence should be like spider's web leaving no exit for the accused to slip away. The various links in the chain, when taken in isolation, might not connect the accused with the commission of the crime but when taken together may unmistakably point out the guilt of the culprit. case based on circumstantial evidence must satisfy three tests:-

> (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
> (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
> (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

6. In the instant matter, we have to adjudge the total cumulative effect of all the proved circumstances, each of which reinforces the conclusion of the guilt of the appellants.

7. In convicting and sentencing the appellant, learned trial Judge appears to have been swayed by the testimony of Munna @ Babua (Pw.9) who had seen the appellant standing in the middle floor of the restaurant

having iron pipe in his hand. In his deposition Munna @ Babua stated that while he was going downstairs he saw the appellant standing in the middle floor where Ram Murti was sleeping. At that time the appellant was having iron pipe in his hand. In the cross examination when Munna @ Babua was confronted with his statement (Ex.D-3) wherein he did not state that the appellant was armed with iron pipe, the witness replied that:-

> "मैंने पुलिस को यह लिखाया था कि जहां राममूर्ति सोया हुआ था वहां रणजीत डण्डा लेकर खडा था। Ex.D-3 में पुलिस ने नहीं लिखा होगा।"

Having closely scrutinised the testimony of Munna @ Babua, we find that this witness by no standard of appreciation can be placed in the category of wholly reliable witness. Testimony of Munna @ Babua is riddled with numerous incongruencies and embellishments, rendering the same to be highly dubious. Even if we accept the testimony as it is, it hardly implicate the appellant with the guilt because the pipe allegedly armed by the appellant had been utilized in the kitchen. In the cross examination the witness deposed thus:-

> "पाइप ढाबे का ही था तन्दूर खिसकाने के काम आता था।"

The witness further stated that the appellant had no enmity with the deceased.

8. A further look at the record reveals that the pipe was found lying near injured Ram Murti. There is nothing on record that could bring the proximate cause and genesis of incident in the lime light. Learned trial court in para 22 of the impugned judgment has taken into consideration two days absence of appellant. In the opinion of learned trial court non-explanation given by the appellant as to why he got arrested on July 12, 2002 when the incident occurred on July 10, 2002, was an incriminating circumstance, that connects the appellant with the guilt. Learned trial court

also considered the recoveries of cheque book, photo and diary belonging to the deceased at the instance of the appellant. We have also scanned relevant recovery memos. In our opinion, the alleged recoveries have not been proved to the hilt, with the aid of cogent and convincing evidence.

9. In view of the incongruities noticed by us we are of the view that the evidence collected by the prosecution is not qualitatively such that on every reasonable hypothesis the conclusion is that the appellant is guilty. We find that the chain of circumstantial evidence against the appellant is not complete and is capable of any other hypothesis than the guilt of the appellant. We do not find a combination of facts creating a network through which there is no escape for the appellant. It appears that learned trial court convicted and sentenced the appellant on the basis of material which created strong suspicion against the appellant.

10. In Ashish Batham Vs. State of M.P. (2002)7 SCC 317, their Lordships of Supreme Court indicated that mere suspicion, however strong it may be, cannot take the place of legal proof. It was observed as under:-

> "Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the henious nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Court dealing with criminal case at least should constantly remember that there is

> a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusion" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

11. In the instant case we find that learned trial court failed to bridge the gap between "may be true' and "must be true" and based its finding on the conjectures. Charge under section 302 IPC therefore could not be established beyond reasonable doubt.

12. For these reasons, we allow the appeal and set aside the impugned judgment dated April 1, 2003 of the learned Special Court (Sati Nivaran) Rajasthan Jaipur and Additional Sessions Judge Jaipur. We acquit the appellant of the charge under section 302 IPC. The appellant Ranjeet Gayan @ Manik, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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